UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,050	12/08/2000	D. Maxwell Chickering	1018.121US1	6216

7590 07/11/2007	EXAMINER
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ART UNIT	PAPER NUMBER
3628	

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MAIL DATE	DELIVERY MODE
07/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<table>
<tr><td rowspan="2">Advisory Action
Before the Filing of an Appeal Brief</td><td>Application No.</td><td>Applicant(s)</td></tr>
<tr><td>09/681,050</td><td>CHICKERING ET AL.</td></tr>
</table>

	Examiner	**Art Unit**	
	Akiba K. Robinson-Boyce	3628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>12 June 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-11 and 13-30</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: As per cliams 1,and 28, applicant argues that Bibelnicks et al fails to disclose Bibelnieks et al. does not teach or suggest tracking solicitation and purchase information for solicited and non-solicited members of a subpopulation, so that this information can be applied to the larger population in making solicitation decisions, but rather, Bibelnieks et al., according to the applicant discloses a system that factors in the impact of multiple promotions to one or more classes of customers over a specified time, attempts to improve direct marketing by determining the cannibalization impact one promotion has on another promotion for a given customer or customer class during this time, and only tracks purchase information for customers who were sent solicitations, yet, is silent regarding setting a purchase variable for non-solicited members of a sub population. First, Bibelnieks et al discloses an optimization process [0067], using a programming model with decision variables for mail or no mail decisions of a promotional stream, and also where the objective is to maximize total promotion revenue, where the mail decision represents the class to solicit, and the no mail decision represents the non-solicited class. In addition, Bibelnieks et al discloses po and p+l in [0062]. Here, each pO and p+l entry of the observed cannibalization matrix (which is a predictive model) represents the purchase variables since it represents the observed maximum possible fraction of sales based upon the customers who received both promotions and purchased product. In this case, pO is the promotion that was not mailed, and therefore customers are not solicited, and p+l represents the promotion that was mailed, and therefore, customers are solicited. Bibelnieks also considers a promotion pair (I, J), where I is promotion pO and J is promotion p+l, and both I and J are used to determine the maximum sales that I would have had to customers in the set S had promotion J not been mailed, thereby determining sales for I or pO or for promotions that were not mailed, or for a non-solicited group. As per claims 2-7, 11, 13-27, 29 and 30, applicant argues that Bibelnieks et al in view of Kohavi does not teach or suggest "setting the purchase variable to the first value for each of the plurality of members of the solicitation and the non-solicitation groups that made a purchase and the second value for each of the plurality of members of the solicitation and the non-solicitation groups that did not make the purchase;...applying the decision tree against the population to identify the sub-population to solicit. However, as discussed above in the preceding paragraph, Bibelnieks et al discloses "setting the purchase variable to the first value for each of the plurality of members of the solicitation and the non-solicitation groups that made a purchase and the second value for each Of the plurality of members of the solicitation and the non-solicitation groups that did not make the purchase", and "identifying the sub-population to solicit" as shown in Bibelnieks et al where the results of the cannibalization matrix can be used to facilitate the predictive model of the effects of J on I by mailing a control group as shown in [0062], lines 27-38. However, Kohavi was cited to show that a decision tree can be used to classify a set of records, and at each decision-node, a test is performed based on one or more attributes (as shown in the abstract), just as in Bibelnieks et al,customers are analyzed based upon historical criteria, and a decision is made whether to mail or not to mail, (as shown in the preceding paragraph). The purpose of incorporating Kohavi into the rejection was to show the use of decision trees in making decision-based analyses. In addition, claims 2-7 and 29-30 depend from independent claim 1 and 28 respectively, and are therefore rejected for the same reasons. .